

**House Study Bill 41 - Introduced**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON HOLT)

**A BILL FOR**

1 An Act relating to home improvement fraud and providing  
2 penalties for contractors who commit home improvement fraud.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 714.29 Home improvement fraud —  
2 penalties.

3 1. As used in this section, unless the context otherwise  
4 requires:

5 a. "Consumer" means an individual who owns, leases, or  
6 rents the residential property that is subject to the home  
7 improvement contract and engages in the home improvement  
8 contract with the contractor.

9 b. "Contract price" means the total price agreed upon in a  
10 home improvement contract.

11 c. "Contractor" means a person who engages in home  
12 improvement work under a home improvement contract or solicits  
13 home improvement contracts whether or not the person interacts  
14 directly with the consumer.

15 d. "Fair market value" means the amount for the home  
16 improvement which in commercial judgment or under usage of  
17 trade would be reasonable for services, materials, and work of  
18 similar quality and workmanship.

19 e. "Home improvement" means any alteration, repair,  
20 addition, modification, or improvement to a dwelling or the  
21 property on which it is situated, including but not limited  
22 to the construction, painting or coating, installation,  
23 replacement or repair of driveways, sidewalks, swimming pools,  
24 unattached structures, porches, kitchens, bathrooms, chimneys,  
25 fireplaces, stoves, air conditioning or heating systems, hot  
26 water heaters, water treatment systems, electrical wiring or  
27 systems, plumbing fixtures or systems, doors, windows, roofs,  
28 gutters, downspouts, and siding.

29 f. "Home improvement contract" means a written or oral  
30 agreement whereby a contractor offers or agrees to provide  
31 a home improvement to a consumer in exchange for payment of  
32 moneys, regardless of whether any such payment is made.

33 g. "Material fact" means a fact that a reasonable person  
34 would consider important when purchasing a home improvement.

35 h. "Unconscionable home improvement contract" means a home

1 improvement contract in which an unreasonable difference exists  
2 between the fair market value of services, materials, and work  
3 performed or to be performed and the home improvement contract  
4 price.

5 2. A person, who is acting as a contractor, is guilty of  
6 home improvement fraud if the person enters, or offers to  
7 enter, into a home improvement contract, and intentionally does  
8 any of the following:

9 a. Uses or employs a false pretense or false promise to  
10 convey that a need exists to enter into a home improvement  
11 contract.

12 b. Knowingly creates or reinforces a consumer's false  
13 impression or belief concerning the condition of a consumer's  
14 dwelling or property that is the subject of the home  
15 improvement contract.

16 c. Makes a false statement or omits a material fact as to  
17 the terms of the home improvement contract or the condition of  
18 a person's dwelling or property that is the subject of the home  
19 improvement contract.

20 d. Receives moneys for the purpose of paying for services,  
21 labor, materials, or equipment and fails to apply such moneys  
22 for such purpose by doing any of the following:

23 (1) Failing to substantially complete the home improvement  
24 for which the moneys were provided within the following time  
25 periods, provided that this subparagraph does not preclude the  
26 contractor and consumer from agreeing to change the original,  
27 substantial completion date to accommodate situations unknown  
28 to either the contractor or consumer at the time of entering  
29 into the original contract:

30 (a) Within thirty days of the date specified in the contract  
31 for substantially completed work, if such a date is specified.

32 (b) Within ninety days of the date of the signed written  
33 home improvement contract, if no completion date is specified  
34 in the contract.

35 (c) Within ninety days of receipt of moneys paid by the

1 consumer to the contractor, if the contract is oral.

2 (2) Failing to pay for the services, labor, materials, or  
3 equipment provided incident to such home improvement.

4 (3) Diverting the moneys to a use other than for which the  
5 moneys were received.

6 e. Provides a false individual name or a false business  
7 name, address, or telephone number to a consumer.

8 f. Enters into an unconscionable home improvement contract  
9 with a consumer.

10 (1) For the purposes of this paragraph, if the contract  
11 price is greater than four times the fair market value of the  
12 services, material, or work performed or to be performed, it is  
13 prima facie evidence that a contract is unconscionable.

14 (2) Fair market value shall be determined as of the date  
15 the home improvement contract was entered into. However, if  
16 such evidence is not readily available, the fair market value  
17 prevailing within any reasonable time before or after the time  
18 described, which in commercial judgment or under usage of trade  
19 would serve as a reasonable substitute, may be used.

20 3. It shall be evidence of intent that the person, who is  
21 acting as a contractor, has committed home improvement fraud if  
22 any of the following are applicable:

23 a. The person has previously been convicted under this  
24 section or under a similar statute of the United States or of  
25 any state within ten years of the home improvement contract in  
26 question.

27 b. The person is currently subject to any administrative  
28 orders, judgments, or injunctions that relate to home  
29 improvements.

30 4. A person who commits an offense under this section is,  
31 upon conviction, guilty of a class "D" felony if any of the  
32 following circumstances are present:

33 a. The contract price or the total amount paid to the  
34 defendant by or on behalf of the consumer is one thousand five  
35 hundred dollars or more.

1     *b.* At least one of the consumers who entered into the home  
2 improvement contract is sixty-two years of age or older at the  
3 time the consumer and the contractor entered into the home  
4 improvement contract.

5     *c.* The defendant has previously been convicted under this  
6 section.

7     5. If none of the circumstances enumerated in subsection 4  
8 are present, a person who commits an offense under this section  
9 is, upon conviction, guilty of an aggravated misdemeanor.

10

EXPLANATION

11             The inclusion of this explanation does not constitute agreement with  
12             the explanation's substance by the members of the general assembly.

13     This bill relates to home improvement fraud. The bill  
14 defines home improvement as any alteration, repair, addition,  
15 modification, or improvement to a dwelling or the property  
16 on which it is situated, including but not limited to the  
17 construction, painting or coating, installation, replacement  
18 or repair of driveways, sidewalks, swimming pools, unattached  
19 structures, porches, kitchens, bathrooms, chimneys, fireplaces,  
20 stoves, air conditioning or heating systems, hot water  
21 heaters, water treatment systems, electrical wiring or systems,  
22 plumbing fixtures or systems, doors, windows, roofs, gutters,  
23 downspouts, and siding.

24     The bill provides that a person, who is acting as a  
25 contractor, is guilty of home improvement fraud if the person  
26 enters, or offers to enter, into a home improvement contract,  
27 and intentionally does any of the following: uses or employs a  
28 false pretense or false promise to convey that there is a need  
29 to enter into a home improvement contract; knowingly creates or  
30 reinforces a consumer's false impression or belief concerning  
31 the condition of a consumer's dwelling or property that is  
32 the subject of the home improvement contract; makes a false  
33 statement or omits a material fact as to the terms of the home  
34 improvement contract or the condition of a person's dwelling or  
35 property that is the subject of the home improvement contract;

1 receives moneys for the purpose of paying for services, labor,  
2 materials, or equipment and fails to apply such moneys for  
3 such purpose by failing to substantially complete the home  
4 improvement for which the moneys were provided within specified  
5 time periods, failing to pay for the services, labor, materials  
6 or equipment provided incident to such home improvement, or  
7 diverting the moneys to a use other than for which the moneys  
8 were received; provides a false individual name or a false  
9 business name, address, or telephone number to a consumer; or  
10 enters into an unconscionable home improvement contract with  
11 a consumer.

12 The bill provides that it shall be evidence of intent that  
13 the person, who is acting as a contractor, has committed home  
14 improvement fraud if the person has previously been convicted  
15 under this bill or under a similar statute of the United States  
16 or of any state within 10 years of entering into the home  
17 improvement contract in question or if the person is currently  
18 subject to any administrative orders, judgments, or injunctions  
19 that relate to home improvements.

20 The bill provides that a person who commits an offense  
21 under the bill is, upon conviction, guilty of a class "D"  
22 felony if any of the following circumstances are present: the  
23 contract price or the total amount paid to the defendant by or  
24 on behalf of the consumer is \$1,500 or more; at least one of  
25 the consumers who entered into the home improvement contract  
26 is 62 years of age or older at the time the home improvement  
27 contract is entered into; or the defendant has previously been  
28 convicted under the bill. If none of these circumstances are  
29 present, a person who commits an offense under the bill is,  
30 upon conviction, guilty of an aggravated misdemeanor.

31 A class "D" felony is punishable by confinement for no more  
32 than five years and a fine of at least \$750 but not more than  
33 \$7,500. An aggravated misdemeanor is punishable by confinement  
34 for no more than two years and a fine of at least \$625 but not  
35 more than \$6,250.